

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-186457

DATE: September 30, 1976

MATTER OF: Guardian Storage, Inc., and District  
Moving and Storage, Inc., Joint Venture

DIGEST:

- 61576  
97948  
U97948
1. Construction of "Contract Areas of Performance" clause as limiting award of contract for storage services to firms having facilities within the county named therein is rejected as making meaningless that portion of clause stating "All areas of performance described \* \* \* below, will be considered to include the Contractor's facility regardless of geographical location."
  2. Provision of DOD 4500.34-R, "Department of Defense Personal Property Traffic Regulation," designating Naval Ordnance Station, Indian Head, Maryland, as responsible for procuring for all military departments transportation and storage services which "originate or terminate" within Charles County, Maryland, does not prohibit Naval Ordnance Station from making award to firm having facility in St. Mary's County, Maryland.
  3. Determination of whether bidder has water supply for fire-fighting purposes "adequate" to assure responsible performance of contract involves subjective judgments. GAO does not review protests against affirmative determinations of responsibility unless fraud by procuring officials is alleged or solicitation contains definitive responsibility criteria which allegedly have not been met. Neither exception to general rule appears raised by question of "adequacy" of low bidder's water supply.
  4. Fact that bidder's price may have been set so low as to allegedly endanger performance does not justify rejecting otherwise acceptable bid unless extremely low bid requires determination that low bidder is nonresponsible. In any event, GAO does not review affirmative determinations of responsibility except under circumstances absent here.
  5. In absence of appropriate evaluation factor in solicitation, award of contract for storage and transportation services to low bidder is not precluded by fact that more distant location of low bidder's facility may result in greater consumption of fuel.

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Guardian Storage, Inc., and District Moving and Storage, Inc. (Guardian), a joint venture, protests any award of a contract to Hilldrups Transfer and Storage, Inc. (Hilldrups) under invitation for bids (IFB) No. N00174-76-B-0065, issued by the Naval Ordnance Station, Indian Head, Maryland (Navy). Award has been withheld pending our decision.

Guardian first contends that Hilldrups has failed to comply with Section H of the IFB, "DELIVERY OR PERFORMANCE," which states in part:

"CONTRACT AREAS OF PERFORMANCE

"(a) All areas of performance described in (b) below, will be considered to include the Contractor's facility regardless of geographical location.

"(b) Service shall be performed within the following defined areas of performance which include terminals identified therein:

"AREA I - All of that area within:

Charles County within 15  
miles Radius of Bryans  
Road ending at the county  
line

"AREA II - All of that area within:

Remainder of Charles County

"AREA III - All of that area covered by:

AREAS I and II. "

Guardian argues that since Hilldrups's only facility is located in Lexington Park, St. Mary's County, Maryland, the location of this facility does not meet the requirements of the above-cited provision. Guardian argues that in these circumstances award to Hilldrups would impair the integrity of the competitive bidding system. It is the Navy's position, however, that this provision addresses the area of contract performance, not the location of the bidder's facilities, and that Hilldrups meets this requirement.

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We agree with the agency that the above quoted provision defines the areas to be served by the contractor but does not require the contractor's facility to be within any of those areas. Otherwise, there would be no need to state that "All areas of performance \* \* \* will be considered to include the Contractor's facility regardless of geographical location." (Emphasis added.)

The protester further contends that DOD 4500.34-R, the Department of Defense Personal Property Traffic Regulation (May 1971) restricts the Naval Ordnance Station in Indian Head to awarding contracts to firms having "facilities" in Charles County, Maryland. Since Hilldrups facility is located in St. Mary's County, the protester argues that Hilldrups is not eligible for award.

Chapter 11 of DOD 4500.34-R establishes areas of responsibility for the procurement of transportation, storage and related services incident to the movement and storage of personal property. With regard to the procedures for establishing personal property shipping offices, paragraph 11005(2) of DOD 4500.34-R states:

"(2) Geographical areas are established within each State in the continental United States, the District of Columbia, Puerto Rico, and Canada. Except as otherwise designated in appendix F for specified installations or activities, a single installation of one military service will be designated as a responsible installation authorized to procure, for all DOD personnel, transportation, storage and related services which originate or terminate within the assigned geographic area." (Emphasis added.)

Appendix F designates the Naval Ordnance Station in Indian Head as the installation responsible for Charles County, Maryland, and the Naval Air Station, Patuxent River, as responsible for St. Mary's and Calvert County, Maryland.

The Ordnance Station's authority to procure transportation services which "originate or terminate" within Charles County does not, in our view, restrict it to contracting only with firms having facilities in that county. We believe the protester has misread this provision, which seeks to eliminate duplication of effort among military installations rather than to restrict contractors' eligibility for award.

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As required by Armed Services Procurement Regulation (ASPR) § 7-1601.8, the solicitation contained a "FACILITIES" clause which provided in part:

"(a) As the minimum standard for qualifications of a contractor's warehouse it must have either (i) an acceptable automatic Sprinkler System (ii) an acceptable automatic fire detection and reporting system; or (iii) a fire contents rate (FCR) of not more than \$0.60 per one hundred dollars(\$100) per year based on eighty percent(80%) co-insurance factors. Installed fire protective systems must be accredited by the cognizant fire insurance rating organization for insurance rate credit. Additionally, facility will be protected by an adequate water supply for fire-fighting and a fire department which is responsive 24 hours a day. Statements from the cognizant fire insurance rating organization, municipal fire departments, or local authority, having jurisdiction, will be used as a basis for determining the sufficiency or adequacy of a fire-fighting water supply and the responsiveness of a fire department to protect a facility."

Guardian contends that Hilldrup's facility does not have available to it an adequate supply of water. In response to this contention, the Navy replied:

"The Charles County standard is not applicable to Hilldrup's facility. The bidder's facility has to meet the standard for the area in which it is located. The Contracting Officer has been assured that Hilldrup's facility meets the qualifications for its area and that this determination is current."

We note that statements from local authorities are to be used in determining whether a bidder has an "adequate" water supply. "Adequate" is not a precise term: local authorities may differ as to whether a particular source of water is "adequate." The presence of an "adequate" water supply is one consideration before the contracting officer when he determines whether a bidder responsibly can perform the contract and, as we've indicated above, the resolution of this question involves some use of judgment.

As a matter of policy, our Office does not review protests against contracting officers' affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly

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have not been met. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365 affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. Here, fraud has not been alleged and the determination of whether an "adequate" water supply exists is sufficiently judgmental in nature as not to be a definitive criterion. Therefore, no basis exists for our review of this aspect of the contracting officer's determination that Hilldrups is responsible.

Guardian also has contended that Hilldrups would "not be able to perform the contract economically" if it based its bid upon wage rates in St. Mary's County but must pay the higher Charles County wage rates shown in the Wage Determination accompanying the IFB.

A contention that a bidder has set his price so low as to endanger performance raises the issue of that bidder's responsibility. See A. C. Electronics, Inc., B-185553, May 3, 1976, 76-1 CPD 295. As we have indicated above, we do not review contracting officer's affirmative determinations of responsibility except under circumstances which are absent here. Therefore, we do not believe the amount of Hilldrups's bid price provides a basis for reviewing the contracting officer's determination that Hilldrups is responsible.

Finally, Guardian has indicated that because of the location of the Hilldrups facility, award to Hilldrups will result in energy waste and thus conflicts with the Government's energy conservation policy. But the Navy, in its report to our Office, has correctly pointed out that energy conservation, while most certainly the objective of the Government, is not usually considered a part of the basis for award under the competitive bidding system. See 10 U.S.C. § 2305(c) (1970) and ASPR § 2-407 (1975 ed.). Moreover, the IFB did not set forth energy consumption as an evaluation factor. Therefore, since this proposed issue does not affect the legality of the Navy's proposed award to Hilldrups, it is not for further consideration by our Office.

In view of the above, the protest is denied.

Deputy

*Atkinson*  
Comptroller General  
of the United States